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2 A. It would be helpful if I had the  
3 screen print.

4 Q. I'll go get them. I just don't know  
5 where to look.

6 When you say the screen print, tell  
7 me which one to look for it?

8 MR. FELD: These were the  
9 supplemental production that you had  
10 asked for. It all came in one batch.

11 MR. MONAHAN: Joe, they have  
12 been marketed as Trial Exhibits 156  
13 to 162. They should be in those  
14 binders that we dropped off for you.

15 MR. MANISCALCO: 156 to 162?

16 MR. MONAHAN: Exactly.

17 MR. MANISCALCO: Okay.

18 Q. In there, sir, if you look up above,  
19 you have what's called reserve credits in  
20 April of 2016; do you see that?

21 A. Yes.

22 Q. Would that also be reflected in  
23 these screen prints?

24 A. Should be. I believe so.

25 Q. Do you know what all these different

1 David Bornheimer 269

2 reserve credits are?

3 This is just additional money that's  
4 coming in.

5 Do you know where that money came  
6 from?

7 A. Again, I think, would it be helpful  
8 if I had the screen prints for me to answer  
9 that.

10 Q. I understand where the \$217,000 is.

11 The protective advance legal, that's  
12 \$400,767.62, do you know where that's  
13 reflected in this loan history?

14 A. It's going into be in the other  
15 amounts column. It's going to be under  
16 transaction description disbursement slash  
17 recoverable advance.

18 Q. Have you found it?

19 A. That's -- that amount is going to be  
20 in several payments. Several advances.  
21 You're not going to see that line item  
22 amount.

23 Q. You don't identify it as legal?

24 A. In this it doesn't. In the screen  
25 prints that we provided, I do provide the

1 David Bornheimer 270

2 legal account, I guess, you could say.

3 Q. Then, if you look at your next line  
4 item, the protective advance operating  
5 expenses of \$420,000, is that reflected in  
6 the December 15, 2016 recoverable advance?

7 A. It's December 22, 2016 recoverable  
8 advance.

9 Q. The third-party expenses, sir, the  
10 \$51,750, do you know where that would be  
11 reflected?

12 A. It's going to be one of the  
13 disbursement recoverable advances in the  
14 other amounts column, but it's going to be  
15 multiple payments, so, you're not going to  
16 see that one amount on this report.

17 Q. I understand where you've identified  
18 maintenance fee.

19 The special servicer liquidation  
20 fee, the \$389,000. I have read through the  
21 pooling and servicing agreement.

22 What is the special servicer  
23 liquidation fee?

24 A. It's a fee due to the special  
25 servicer for certain events to fine in the

1 David Bornheimer 271

2 servicing agreement.

3 Q. Isn't it a fee to work out a loan?

4 A. Essentially, yes.

5 Q. If this loan is not worked out and  
6 these properties are liquidated, how is that  
7 special servicing liquidation fee earned?

8 MR. FELD: Objection as to  
9 form.

10 A. Well, we calculate it as one percent  
11 of the amount due.

12 Q. But the pooling and servicing  
13 agreement actually does use the words a work  
14 out, right?

15 A. Yes.

16 Q. When you calculated it, you didn't  
17 take into consideration a work out, you just  
18 used the one percent?

19 MR. FELD: Objection as to form  
20 as to how you're defining work out.

21 A. We calculated this off of one  
22 percent of the amount due.

23 Q. So, you calculated it out of, I  
24 guess, you took the \$40 million \$252,000  
25 minus that amount?



1 David Bornheimer 272

2 A. I think, that's right.

3 Q. Then, multiply that by one percent?

4 A. Yes.

5 Q. My office brought in the screen  
6 shots. This will challenge your eyes. It's  
7 pretty small. (Handing.)

8 I just showed you the screen shots  
9 that you were looking for.

10 MR. FELD: Are we going to mark  
11 these as an exhibit?

12 MR. MANISCALCO: Yes. Exhibit  
13 62.

14 (Whereupon, Bornheimer Exhibit 62,  
15 screen shots were marked, for  
16 identification, as of this date.)

17 Q. If you look at this, sir, does this  
18 refresh your recollection now as to what some  
19 of these different line items represent?

20 A. Yes.

21 Q. Can you take me through the first  
22 page.

23 This is the \$420,000 dip payment?

24 A. Correct.

25 Q. I think, we totally agree on that

1 David Bornheimer 273

2 one?

3 A. I think so.

4 Q. The next page, this shows the  
5 \$400,000; this is the legal fees?

6 A. Correct.

7 Q. Then, you show me the different days  
8 that the fees were paid?

9 A. Yes.

10 Q. If you look at this, this seems to  
11 be a running total of fees that were on this  
12 file since March 5th of 2013; is that  
13 correct?

14 A. Yes.

15 Q. These are not fees that were  
16 incurred post petition during the bankruptcy,  
17 right?

18 A. Well, they were incurred post  
19 Washington bankruptcy.

20 Q. Were they incurred post Olympia  
21 bankruptcy?

22 A. Somewhat.

23 Q. This \$400,000 that you're asking for  
24 in this line item, this amount of money was  
25 incurred dating back to 2013, correct?

1 David Bornheimer 274

2 A. Yes. It goes back to 2013, yes.

3 Q. This is, a portion of this line  
4 item, is a pre-petition Olympia amount, and a  
5 portion of it is a post petition Olympia  
6 amount?

7 A. Correct.

8 Q. I reviewed the CDC plan.

9 You had fees approved in the CDC  
10 plan; do you recall that?

11 A. Yes.

12 Q. Those legal fees were paid back  
13 then; why are they continually being accrued  
14 here?

15 A. This starts in 2013. That CDC plan  
16 was 2011.

17 Q. So, you got paid for the prior  
18 period from 2011 and these are fees that were  
19 incurred from March 5th of 2013?

20 A. Yes. After the default.

21 Q. You have another line item, which is  
22 your property tax advance?

23 A. Yes.

24 Q. This is the amount that coincides  
25 with the loan history that you just showed

1 David Bornheimer 275

2 me?

3 A. Correct.

4 Q. The next page you have \$51,750 on  
5 the next page, sir.

6 If I look at this, this was incurred  
7 from June of 2016 to December 2016, correct?

8 A. That says April.

9 Q. I apologize. I told you it was  
10 going to challenge our eyes and I have  
11 glasses on.

12 April 6th of 2016?

13 A. Correct.

14 Q. That's when it starts to December  
15 6th of 2016?

16 A. Yes.

17 Q. Out of this \$51,750, the post  
18 petition period for the Olympia bankruptcy is  
19 really only one item, which is the \$27,000,  
20 which is in December of 2016; is that  
21 correct?

22 A. That's correct.

23 Q. And the balance is a pre-petition  
24 amount, right?

25 A. Yes.

1 David Bornheimer 276

2 Q. It says here a miscellaneous fee  
3 credit of \$28,600, which was paid on June  
4 10th of 2016; do you know what that's for?

5 MR. FELD: Can you repeat the  
6 amount you're looking at?

7 MR. MANISCALCO: Joe.

8 Q. The line item \$28,600, Casey  
9 Phillips, it's a credit; do you know where  
10 that came from?

11 A. Yes. That came out of our suspense  
12 account. It was an amount to pay down that  
13 protective advance.

14 Q. Who's Casey Phillips?

15 A. She's an employee at Midland.

16 Q. You took money from the borrower's  
17 suspense account and you swept it to a  
18 disbursement account to pay for this  
19 appraisal?

20 A. Yes. We paid Midland back for the  
21 advance for the appraisal.

22 Q. If you look, sir, at the legal fee  
23 analysis, that also occurred on June 10th of  
24 2016, \$153,248.95 was swept from the  
25 borrowers reserve account and credited to

1 David Bornheimer 277

2 legal fees; is that correct?

3 A. Can you give me the number?

4 Q. June 10th of 2016.

5 A. Yes. \$153, 248.98?

6 Q. Yes.

7 Did you direct that sweep to occur?

8 A. Yes, I would have directed that.

9 Q. What authority did you have to take  
10 the money from the reserve account and sweep  
11 it to the miscellaneous fee account and  
12 credit it to legal fees?

13 A. We swept it to the suspense account.  
14 You can see the entry on 6-9 of '16, where we  
15 collapsed the reserves.

16 Q. It went into a suspense account and  
17 then to a reserve account?

18 A. No. The reserves were collapsed,  
19 and the money was transferred to the suspense  
20 account, and then applied to the advances  
21 that we've discussed.

22 Q. So, by collapsing those reserve  
23 accounts, the debtor then was now deficient  
24 in its reserve account?

25 A. Well, the borrower was deficient in

1 David Bornheimer 278

2 the reserve account, absent that collapse.

3 Q. How do you know that?

4 A. Because they did not make the June  
5 2016 payment.

6 Q. You said they didn't make the June  
7 payment because the receiver didn't make the  
8 payment, they didn't have enough money to  
9 make the payment.

10 It wasn't the borrower that didn't  
11 make the payment in June, right; the receiver  
12 is in control?

13 A. The borrower is the obligor.

14 Q. But the receiver was in control of  
15 the money in June of 2016?

16 A. Yes, that's right.

17 Q. If you look down, sir, in May of  
18 2015, there's another miscellaneous fee  
19 credit which goes to legal fees of, I think,  
20 it says \$58,925?

21 A. Which account are you in?

22 Q. I'm in the same legal account, page  
23 two.

24 A. Yes.

25 MR. FELD: What's the date and

1 David Bornheimer 279

2 the amount?

3 MR. MANISCALCO: May. The line  
4 item is May 6, 2015.

5 Q. Is that the same situation, you  
6 swept it from a reserve account to pay the  
7 legal fees?

8 A. I don't have that in my screen shots  
9 where that money came from.

10 Q. You don't know why you took that  
11 from the debtor's account and applied it to  
12 legal?

13 MR. FELD: Objection.

14 Did you mean to say debtors?

15 MR. MANISCALCO: Borrowers.

16 A. Well, there was an outstanding legal  
17 advance at the time.

18 Q. Why did you take the borrower's  
19 reserve money and sweep it to pay legal fees?

20 A. I didn't say we took the reserve  
21 money to sweep it to pay legal fees. I  
22 didn't say that on this entry.

23 Q. Can you tell me what happened with  
24 this entry, this miscellaneous fee credit  
25 entry?



1 David Bornheimer 280

2 A. As I mentioned, the screen prints  
3 that we've got here don't show this entry.  
4 It's not from one of the accounts that are on  
5 these screen prints.

6 Q. I don't understand what that means.  
7 The screen prints that you're  
8 looking at don't show what entry?

9 A. Don't show where the \$58,925.27 came  
10 from.

11 Q. But the one we just looked at didn't  
12 show where it came from either, but you said  
13 it came from the reserve account, which went  
14 into the suspense account; it's the same  
15 exact language?

16 A. Which one are we talking about?

17 Q. In June you said, oh, that one was  
18 we collapsed the reserve and we set up a  
19 suspense account and applied it to legal  
20 fees.

21 If you look at the May one, it's the  
22 exact same language of entry, miscellaneous  
23 fee credit; so, how do you know what you did  
24 in the June one, but you don't know what you  
25 did in the May one?

1 David Bornheimer 281

2 A. I know the June one because it's on  
3 the suspense account. If you flip back a  
4 couple of pages you'll see the suspense  
5 account. That money went from the reserve  
6 accounts to the suspense account. It's  
7 detailed here (indicating).

8 Q. But you don't know where the \$53,000  
9 went?

10 A. I said I don't know where it was  
11 allocated from to pay down the legal advance.  
12 It wasn't from these accounts we're looking  
13 at from these screen prints.

14 Q. Let's look at the suspense account  
15 that you were just testifying to.

16 What is a suspense account?

17 A. It's an account that is set up to  
18 house money for a temporary period of time,  
19 typically. So, if money comes in, and  
20 there's no instructions to where it goes, the  
21 money gets deposited into a suspense or an  
22 applied account. The money is held there  
23 usually for a short period of time.

24 Q. In this suspense account analysis,  
25 or screen print that I'm looking at, I have

1 David Bornheimer 282

2 in June of 2016, \$266,330.04 sitting in a  
3 credit suspense account; do you see that?

4 A. Yes.

5 Q. Do you know where that money came  
6 from?

7 A. It came from those transaction  
8 accounts that are noted 2000, 2010 2430,  
9 2455, and 2490.

10 Q. What does that tell me?

11 A. They are just different accounts.

12 Q. Those were different accounts and  
13 the money was swept into this particular  
14 suspense account?

15 A. Yes.

16 Q. But do you know what those accounts  
17 are?

18 A. Not without reviewing my servicing  
19 system.

20 Q. And reviewing the identification of  
21 all those different accounts?

22 A. Correct.

23 Q. It came into the suspense account,  
24 from there, you applied it to miscellaneous  
25 fee credits for the balance of the month of

1 David Bornheimer 283

2 June and, I guess, some was sent to the  
3 receiver of \$83,590, correct?

4 A. Correct.

5 Q. So, the \$153,000 paid legal fees,  
6 the \$28,600 paid an appraisal fee, and the  
7 \$83,000 went to the receiver?

8 A. Yes.

9 MR. FELD: Is this page four  
10 you're working off of, Joe?

11 MR. MANISCALCO: This is the  
12 third to last page called suspense  
13 account.

14 (Whereupon, a recess was taken at  
15 this time.)

16 Q. Mr. Bornheimer, I'm going to mark as  
17 Bornheimer 63, this is a copy of the most  
18 recent payoff now on the B note.

19 (Whereupon, Bornheimer Exhibit 63,  
20 payoff on B Note was marked, for  
21 identification, as of this date.)

22 Q. Are you familiar with this document?

23 A. Yes.

24 Q. Can you tell me how you obtained a  
25 copy of this payoff?

1 David Bornheimer 284

2 A. This was prepared by Wells Fargo who  
3 is the master servicer for the B note loan.

4 Q. Wells Fargo then sent this to you?

5 A. Yes.

6 Q. You requested this payoff in  
7 connection with Midland's position as the  
8 special servicer?

9 A. Yes.

10 Q. This indicates that the B note is  
11 owed \$2 and a half million dollars in  
12 principle; do you see that?

13 A. Yes.

14 Q. And I see the interest component,  
15 which is due from 2014 through April 30th of  
16 2017; do you see that?

17 A. Yes.

18 Q. Then, there's a default interest  
19 component, there's a late fee component, do  
20 you know what the additional principle and  
21 interest component is?

22 A. Yes.

23 Q. What is that?

24 A. That's an amount due under the  
25 bankruptcy plan.

1 David Bornheimer 285

2 Q. That is the prior CDC bankruptcy  
3 plan?

4 A. Yes.

5 Q. There's a special servicer  
6 liquidation fee; is that a fee to Midland?

7 A. Yes.

8 Q. Is that a similar server liquidation  
9 fee that you had calculated in connection  
10 with the A note payoff?

11 A. Yes.

12 Q. Is it the same one percent or is it  
13 a different interest rate?

14 A. The same one percent.

15 Q. The special servicing fee, the  
16 \$41,000, that is actually a reimbursement due  
17 back to the US Bank trust on this note?

18 A. Yes, due back to the trust.

19 Q. I'm going to mark as Exhibit 64,  
20 this is a copy of that CDC plan that we were  
21 just talking about.

22 (Whereupon, Bornheimer Exhibit 64,  
23 CDC plan was marked, for identification,  
24 as of this date.)

25 Q. If you look at that document, sir,

1 David Bornheimer 286

2 is that the CDC plan that you were just  
3 talking about with respect to the A note and  
4 the B note?

5 A. This is the order confirming the  
6 plan.

7 Q. Do you recall what the terms of that  
8 plan were?

9 A. Well, the terms are detailed in the  
10 plan, in the disclosure statement.

11 Q. At the time Midland's attorneys were  
12 K&L Gates; is that correct?

13 A. Yes.

14 Q. Did K&L Gates work with the debtors  
15 in the CDC case in order to confirm a plan of  
16 reorganization?

17 A. That's my understanding, yes.

18 Q. Is it your understanding that  
19 Midland agreed on behalf of the A note and  
20 the B note to accept the terms of the plan?

21 A. Yes.

22 Q. If you turn to page 16, the plan, it  
23 talks about the Wells Fargo claim and how the  
24 claim is going to be paid; do you see that?

25 A. Yes.

1 David Bornheimer 287

2 Q. It talks about the LaSalle Bank  
3 claim, which is class four. It indicates how  
4 that is going to be paid and the LaSalle  
5 claim is the B note that we've been referring  
6 to; is that correct?

7 A. That's correct.

8 MR. FELD: What page?

9 MR. MANISCALCO: That was page  
10 16.

11 MR. FELD: Page 16 of the --

12 MR. MANISCALCO: Of 28. Bottom  
13 right; do you see it?

14 Q. If you look at page 17, sir, B, it  
15 says outstanding accrued, but unpaid payments  
16 totalling \$361,298.34; do you see that?

17 A. Yes.

18 Q. That's the same number that's on  
19 this B note payoff that we were just looking  
20 at?

21 If you look at the B note payoff.

22 A. Yes.

23 Q. If you look at page 18, sir, it  
24 talks about a waterfall provision; do you see  
25 that?



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2 A. Yes.

3 Q. What is your understanding of how  
4 the waterfall was supposed to work with  
5 respect to the reorganized CDC debtor?

6 A. Well, as detailed in the plan.

7 Q. Let's go through it then.

8 The waterfall indicates the debtor  
9 will first pay, or reserve funds for paying  
10 when due, the monthly property taxes,  
11 insurance, and normal and customary operating  
12 expenses arising from the property, as well  
13 as administrative expenses currently arising  
14 under the cash management agreement; do you  
15 see that?

16 A. Yes.

17 Q. The debtor in the CDC case had a  
18 cash management agreement with Midland?

19 A. These were the cash management  
20 agreements in place.

21 Q. Do you understand what the cash  
22 management agreement provided for?

23 A. Yes, generally.

24 Q. What did it provide for?

25 A. It provided for the cash to be

1 David Bornheimer 289

2 deposited into a central account.

3 MR. FELD: Objection.

4 The document speaks for itself.

5 MR. MANISCALCO: No, it  
6 doesn't.

7 MR. FELD: Do you have a  
8 specific --

9 MR. MANISCALCO: I asked him a  
10 specific question, which he was  
11 answering.

12 Q. You can continue.

13 MR. FELD: Is there a question  
14 about that document?

15 MR. MANISCALCO: No, there's a  
16 question about the cash management  
17 agreement, which you were just doing  
18 a great job explaining, sir.

19 Q. Why don't you finish that  
20 explanation as to what the cash management  
21 agreement is?

22 A. It's part of the loan documents that  
23 provides for the administration of the cash  
24 trap period.

25 Q. Does that mean a central bank

1 David Bornheimer 290

2 account is established where all the money  
3 from the tenants is going to go into?

4 A. I believe, that's how this was set  
5 up.

6 Q. So, the process at the time of this  
7 confirmed plan was that all of the tenant  
8 income was going to go into a central bank  
9 account; is that correct?

10 A. That's my understanding.

11 Q. That's central bank account is going  
12 to be controlled by the lender; is that  
13 correct?

14 A. Yes.

15 Q. The lender would then utilize the  
16 money in the account and payout according to  
17 these waterfall provisions under the plan; is  
18 that correct?

19 A. Right.

20 Q. After payment of A, the next payment  
21 was going to be made as necessary to meet  
22 current obligations under certain reserve  
23 accounts?

24 A. Yes.

25 Q. Then, C is going to pay the monthly

1 David Bornheimer 291

2 debt service on Wells Fargo's claim?

3 A. Yes.

4 Q. And, then, LaSalle's claim, which is  
5 the B note, right?

6 A. Right.

7 Q. Then, the waterfall follows through,  
8 right?

9 A. Right.

10 Q. My understanding is the way this  
11 plan was set up was, hands off for the  
12 debtor, the money is going to come into an  
13 account controlled by the lender, then, the  
14 lender will disburse this money in a  
15 waterfall analysis under the plan; is that  
16 your understanding as well?

17 A. Yeah.

18 Q. Have you reviewed the loan histories  
19 and the bank statements to determine whether  
20 the waterfall provisions under this plan were  
21 followed?

22 A. I reviewed the loan history report.

23 Q. What else did you review aside from  
24 the loan history report to determine whether  
25 Midland was complying with the waterfall

1 David Bornheimer 292

2 provisions?

3 A. Well, I reviewed, there was a letter  
4 that our counsel at the time drafted, that I  
5 reviewed after an analysis was done on the  
6 bank accounts.

7 Q. That's K&L Gates?

8 A. Yes.

9 Q. What else did you review; I think, I  
10 have that letter?

11 A. Just the information in the file.

12 Q. Can you tell me what else you  
13 reviewed, aside from loan histories, the  
14 letter from your counsel; did you review  
15 anything else?

16 A. I reviewed the file that was  
17 produced.

18 Q. Did you review the bank statements  
19 and the cash that was actually in the bank?

20 A. Not in detail. I know we produced  
21 those. I have not had a chance to review  
22 them in detail.

23 Q. Here is a letter. If you hold that  
24 plan open, sir, a letter from K&L Gates dated  
25 November 13, 2014.

1 David Bornheimer 293

2 Is that one of the letters that you  
3 reviewed?

4 (Whereupon, Bornheimer Exhibit 65,  
5 11-13-14 letter was marked, for  
6 identification, as of this date.)

7 A. Yes, I have seen this letter.

8 Q. This letter indicates that there was  
9 an error in the waterfall provisions, but  
10 that they caught up some of the B note  
11 payments under the waterfall, and then made  
12 the payments, correct?

13 MR. FELD: Take your time in  
14 reading it.

15 A. What was the question?

16 MR. MANISCALCO: Read it back.

17 MR. FELD: Do you have a copy  
18 of this?

19 MR. MANISCALCO: There's a  
20 question first. You have to answer  
21 it.

22 A. They are talking about the catch up  
23 payments.

24 MR. FELD: Before you ask the  
25 next question, do you have a copy

1 David Bornheimer 294

2 that has the Bates numbers on it so  
3 we could track it?

4 MR. MANISCALCO: I do not. I  
5 only have this.

6 MR. FELD: Who was this  
7 produced by?

8 MR. MANISCALCO: You guys. I  
9 don't know why it's not on here  
10 though. This may have come from  
11 Centrum.

12 Q. Did you ever discuss with Paul  
13 Martin the waterfall provisions and who was  
14 responsible at Midland to make sure that  
15 these payments were made?

16 A. I have discussed those -- I did  
17 discuss the waterfall provisions with Paul  
18 before he retired.

19 Q. Who was it at Midland that was  
20 handling the payment of the waterfall amounts  
21 to the different creditors?

22 A. The asset manager provides the  
23 posting instructions.

24 Q. It would have been Paul Martin?

25 A. Whoever the asset manager is at the

1 David Bornheimer 295

2 time. That's their responsibility.

3 Q. Let's identify who was the asset  
4 manager was at the time.

5 In 2014, this letter is copied to  
6 Paul Martin, does that refresh your  
7 recollection that he was the asset manager?

8 A. Yes, he was at the time.

9 Q. Paul Martin was the asset manager in  
10 2014 when the CDC plan was confirmed, which  
11 is the exhibit you looked at before, that was  
12 in November of 2011, right?

13 A. Right.

14 Q. Those plan payments were supposed to  
15 start December of 2012 and was Paul Martin  
16 the asset manager in December of 2012?

17 A. No.

18 Q. Who was it?

19 A. I don't recall.

20 Q. It was someone before him?

21 A. Yes.

22 Q. In here, he indicates that there is  
23 insufficient money in the account to make the  
24 March 1, 2013 regular payment; do you see  
25 that?



1 David Bornheimer 296

2 A. Yes.

3 Q. I'll mark as Bornheimer 66, a copy  
4 of the March bank statement, which is PNC  
5 National Bank, which basically shows the  
6 money that's going in and out of the account  
7 in accordance with the waterfall provision;  
8 do you see that, sir?

9 (Whereupon, Bornheimer Exhibit 66,  
10 PNC bank statements was marked, for  
11 identification, as of this date.)

12 Q. In looking at that, sir, what is the  
13 amount of money that's in the bank account?

14 A. The ending balance is \$675,686.06.

15 Q. What is the monthly payment that is  
16 supposed to be made to the B note?

17 A. To the B note?

18 Q. Yes. In accordance with the  
19 waterfall?

20 A. The plan says the debtor will pay  
21 the next monthly debt service payment in the  
22 LaSalle Bank claim.

23 Q. Right.

24 If you look at page 17, it gives you  
25 the amount though, right?

1 David Bornheimer 297

2 Isn't the monthly payment to the B  
3 note \$27,792.18?

4 A. We're talking -- are you asking  
5 about B, where it says the \$361,000 --

6 Q. No.

7 It says here in the K&L Gates letter  
8 the monthly payment is \$27,792.18.

9 A. The catch up payments.

10 Q. The monthly payment that is due on  
11 the B note is \$27,792.18, right?

12 A. I don't know.

13 Q. I'll get it for you then.

14 You don't know who the monthly  
15 payment is due on the B note?

16 A. It doesn't say in the plan. At  
17 least what you've shown me.

18 Q. If we look at the plan at page 17 it  
19 says there's an outstanding balance of  
20 \$361,298.34, which will be due and payable in  
21 monthly installments of \$27,792.18,  
22 commencing on January 1, 2013, and continuing  
23 every month thereafter, right?

24 A. I see that.

25 Q. That was going to be paid to the B

1 David Bornheimer 298

2 note to catch up on these arrears, they  
3 essentially didn't ask for the cash up front.  
4 They said you owe us \$361,000, but you could  
5 pay it over time, right?

6 A. Right. The catch up payments.

7 Q. The catch up payments were due on a  
8 monthly basis of \$27,792.18, right?

9 A. Right.

10 Q. Your attorney is saying there's  
11 insufficient money in March of 2013 to make a  
12 \$27,792.18 payment, right?

13 A. Right.

14 Q. The bank statement I showed you,  
15 what's the average balance that's in the bank  
16 account of that month?

17 A. The average balance is \$555,863.30.

18 Q. Why did Midland not make the March  
19 2013 payment on the B note?

20 MR. FELD: Objection.

21 There's a problem with that  
22 question. I think, you're  
23 misconstruing what the letter says.  
24 The letter talks about the regular  
25 monthly payment and the catch up

1 David Bornheimer 299

2 payment. You have to read the letter  
3 in context.

4 MR. MANISCALCO: Okay.

5 Q. Do you know why Midland, if there's  
6 \$555,000 in the bank account, did not make  
7 the B note's monthly payment for March of  
8 2013?

9 A. Yes. Because the letter says that  
10 the cash flow was insufficient.

11 Q. As you look at the bank statement,  
12 can you tell me how the cash flow is  
13 insufficient when there's \$555,000 in the  
14 bank?

15 A. The bank statement doesn't tell me  
16 what's available in -- to fund the plan  
17 payments.

18 Q. So, cash in the bank doesn't tell  
19 you what is available to be utilized to make  
20 the payments?

21 A. It doesn't tell me when the loans --  
22 what months that's supposed to be applied to.  
23 I don't have enough information to make a  
24 comment on that.

25 Q. Well, you remember testifying that

1 David Bornheimer 300

2 you said this B note went into default March  
3 of 2013 because of a failure to make a  
4 payment, right?

5 A. Right.

6 Q. What I'm trying to understand is, I  
7 went and looked at the bank statements  
8 because wouldn't that show me, if there's no  
9 money in the bank, then, I get it, there's no  
10 money in the bank, you can't make the  
11 payment, right; do you understand?

12 A. I understand.

13 Q. I'm showing you the bank statement  
14 that shows there is over a half a million  
15 dollars in the bank.

16 If there's a half a million dollars  
17 in the bank, why is Midland not paying the B  
18 note?

19 A. That's -- you're giving me a date  
20 and time. You got to correspond that to how  
21 far the loan was past due. What the  
22 obligations were at the time to run in the  
23 waterfall.

24 Q. I gave you the plan, the plan says  
25 we're going to make payments on a monthly

1 David Bornheimer 301

2 basis, right?

3 A. Right.

4 Q. Here's how we're going to make the  
5 payments on a monthly basis, right?

6 A. Here's how who's going to make the  
7 payments?

8 Q. Midland controls the bank account.  
9 We already established that the  
10 lender controls the bank account. The lender  
11 controlling the bank account is going to  
12 follow this plan and it's going to make  
13 payments to the creditors in accordance with  
14 that plan?

15 A. Right.

16 Q. Because the debtor, the CDC debtor,  
17 the reorganized debtor, was absolutely not in  
18 control of the money, right?

19 MR. FELD: Objection to using  
20 the word debtors.

21 Q. The reorganized debtor as defined in  
22 the plan was not in control of the money?

23 A. The money was supposed to be  
24 deposited into the lock box account.

25 Q. Do you have any information where

1 David Bornheimer 302

2 that reorganized debtor actually grabbed the  
3 money or did it go into the lock box account?

4 A. I think, it went into the accounts.

5 Q. If the money went into the bank  
6 accounts, and I'm showing the bank statements  
7 where the cash is in the bank account, what I  
8 don't particularly understand is, why Midland  
9 didn't pay the B note?

10 A. We ran the waterfall pursuant to the  
11 plan.

12 Q. Exactly.

13 If you ran the waterfall pursuant to  
14 the plan, and there was cash in the bank, why  
15 didn't Midland make the payment?

16 A. Because it states in the letter  
17 there, the cash was insufficient.

18 Q. This is a letter from your attorney  
19 saying the cash is insufficient.

20 I'm telling you, I'm showing you,  
21 sir, do you come to the same conclusion,  
22 looking at the bank statement, that there was  
23 \$500,000 in the bank?

24 A. In the balance, yes.

25 Q. You come to the same conclusion,

1 David Bornheimer 303

2 looking at the bank statement that is in  
3 front of you, with the conclusion that your  
4 attorney drew back in November of 2014, that  
5 there's no money in the bank and, therefore,  
6 the B note is default?

7 MR. FELD: Objection as to  
8 form.

9 A. No. He didn't say there was no  
10 money in the bank. He said the cash flow is  
11 insufficient.

12 Q. Right.

13 I'm asking you, there's \$500,000 in  
14 the account. There's cash in the account.  
15 Can you tell me how the money in the account  
16 is not sufficient to pay the B note?

17 A. Because when we ran the waterfall  
18 pursuant to the plan it wasn't sufficient  
19 money.

20 Q. We're going to mark as Bornheimer  
21 67, we'll go through the waterfall, sir.

22 (Whereupon, Bornheimer Exhibit 67,  
23 waterfall schedule was marked, for  
24 identification, as of this date.)

25 Q. Bornheimer 67, sir, is a schedule,



1 David Bornheimer 304

2 which was created based on the bank  
3 statements that were turned over in this  
4 case.

5 If you look at the first month, sir,  
6 see the first month; November 1, 2011?

7 A. Yes.

8 Q. In the account it shows there were  
9 deposits in the bank account of \$1 million  
10 \$51,082; do you see that?

11 A. Yes.

12 Q. Money was taken out for operating  
13 expenses, replenishment reserve accounts,  
14 releasing reserve accounts; do you see that?

15 MR. FELD: Just for  
16 clarification, what is the origin of  
17 this document; what's the nature of  
18 it?

19 MR. MANISCALCO: This was a  
20 document that was created by our  
21 accountant utilizing the bank  
22 statements. Basically, taking the  
23 bank statements and putting it into a  
24 spreadsheet.

25 MR. FELD: This was created by

1 David Bornheimer 305

2 your accountants?

3 MR. MANISCALCO: Yes.

4 Q. If you look, sir, at the first  
5 month, November of 2011, there's \$1 million  
6 \$51,000 in deposits, correct?

7 A. I see that number.

8 Q. Now, it goes through a waterfall.  
9 C, column, D says BOA \$66,299?

10 A. Column D?

11 Q. D as in David; on the left-hand side  
12 vertically up and down?

13 A. I see nothing in that D column.

14 Q. (Indicating).

15 A. The row.

16 Q. Yes. Row D?

17 A. Yes.

18 Q. \$66,299 went to the operating  
19 expenses, right?

20 A. I see that number.

21 Q. Which follows the waterfall, the  
22 next tranche of money goes to Wells Fargo,  
23 \$229,814.95; do you see that?

24 A. Okay.

25 Q. That appears to be a regular monthly

1 David Bornheimer 306

2 payment to the A note, correct?

3 A. I don't know.

4 Q. Okay. Let's make it clear.

5 Why don't we look at the loan  
6 history, cross reference this. You have the  
7 loan history in front of you, it's Exhibit 4.

8 Tell me whether that's a regular  
9 monthly payment?

10 A. Does not appear so.

11 Q. Next, if you look at that waterfall,  
12 the next payment should be the B note, right?

13 If you look at the CDC plan  
14 waterfall. Let's go back to the waterfall.  
15 If you look at page 18, the reorganized  
16 debtor will pay the monthly debt service owed  
17 to Wells Fargo, right?

18 That seems to be the 229 payment?

19 A. I don't know.

20 Q. But what's the next payment that's  
21 due; the monthly debt service on the LaSalle  
22 Bank claim, right?

23 A. Under D, under the waterfall  
24 provisions?

25 Yes, I see that.

1 David Bornheimer 307

2 Q. A says you pay operating expenses, B  
3 says you pay two different reserve accounts;  
4 are you following me so far?

5 A. Not completely.

6 Q. Really?

7 Look at page 18. Let's read this,  
8 "the reorganized debtor will continue to  
9 comply with the cash management agreement  
10 currently in place and will make payments,  
11 including creditor payments required by this  
12 plan, from available operating income from  
13 the real property in accordance with the  
14 following waterfall provisions;" do you  
15 understand what that means?

16 A. Yes.

17 Q. Explain what it means?

18 A. It means what you read.

19 Q. What is your understanding?

20 A. To make payments in accordance with  
21 the waterfall.

22 Q. What is your understanding of what  
23 that means?

24 A. That payments will be made in  
25 accordance with the waterfall provisions.

1 David Bornheimer 308

2 Q. Where do they get payments from?

3 A. Where does who get payments?

4 Q. You said payments will be made.

5 What payments will be made?

6 A. The payments received by the Midland  
7 as the master server.

8 Q. Midland will receive payments from  
9 the rental income and then will pay it in  
10 accordance with this document, right?

11 A. Right.

12 MR. FELD: Objection.

13 Which document?

14 MR. MANISCALCO: The document  
15 we're looking at, which is the CDC  
16 plan.

17 Q. What is the first payment that's  
18 supposed to be made under this document and  
19 how you read it?

20 A. Monthly property taxes.

21 Q. What else?

22 A. Insurance.

23 Q. What else?

24 A. Normal and customary operating  
25 expenses.

1 David Bornheimer 309

2 Q. Arising from the real property,  
3 right?

4 A. Yes.

5 Q. The first thing we do, we take the  
6 money that's in the account, from the rental  
7 income, and we pay taxes, insurance, and  
8 operating expenses, correct?

9 A. Correct.

10 Q. If there's money left after that we  
11 pay the next thing, that's what a waterfall  
12 is, right?

13 MR. FELD: I'm going to object  
14 to the questions based on this  
15 document.

16 We don't have any idea of the  
17 basis of this document whether it's  
18 accurate or not.

19 MR. MANISCALCO: This is the  
20 plan. I'm not even there.

21 MR. FELD: I'm talking about  
22 Exhibit 67.

23 MR. MANISCALCO: He's answering  
24 questions on the plan. You could  
25 object to that one, but we're talking

1 David Bornheimer 310

2 about the plan. We'll get there.

3 Q. Let's go back, sir.

4 Do you understand what a waterfall  
5 provision is?

6 A. Yes.

7 Q. The first amount of money of the  
8 money in the bank will pay what's covered  
9 under A, right?

10 A. Right.

11 Q. Then, if there's more money, the  
12 next amount of money will pay B, right?

13 A. Right.

14 Q. That will pay two different reserve  
15 accounts correct?

16 A. Correct.

17 Q. Then, the next amount of money will  
18 pay the debt service to Wells Fargo claim,  
19 right?

20 A. Correct.

21 Q. That is the A note?

22 A. Yes.

23 Q. Whatever the monthly debt service  
24 payment is on the A note will be the third  
25 thing that gets paid, right?

1 David Bornheimer 311

2 A. Yes.

3 Q. What is the fourth thing that gets  
4 paid?

5 A. The debt service on the B note.

6 Q. The debt service on the B note.

7 If there's still more money, then,  
8 what happens?

9 A. Then, you keep going down the  
10 waterfall.

11 Q. So, the waterfall is based upon  
12 money that's in the bank, we waterfall the  
13 payments in accordance with the money that's  
14 coming in the bank, right?

15 A. Right.

16 Q. Now, let's look at 67. If you look  
17 at 67, it shows you a balance of \$1 million  
18 \$51,000 that was in the bank; do you see the  
19 deposits?

20 MR. FELD: This is the document  
21 I object to. We don't the basis of  
22 this.

23 MR. MANISCALCO: You can object  
24 to it.

25 MR. FELD: We don't think the



1 David Bornheimer 312

2 witness should be answering questions  
3 about a document that he doesn't know  
4 the accuracy of or how it was  
5 generated.

6 You could answer it only if  
7 you're comfortable with it, but if  
8 you're not comfortable with the basis  
9 or the origin of it, methodology  
10 used, and no idea about the accuracy  
11 of it, you shouldn't be speculating.

12 You could answer any questions  
13 about documents that you're familiar  
14 with.

15 THE WITNESS: Okay.

16 Q. So, presuming this document  
17 accurately reflects what's in the bank  
18 statements, this indicates there's \$1 million  
19 \$51,000 in the bank in November of 2011.  
20 This document shows a waterfall analysis of  
21 what you and I just went through.

22 So, my question is, can you tell me  
23 in this document where the B note is paid?

24 A. I'm not familiar with this document.  
25 So I'm not comfortable. I can read along

1 David Bornheimer 313

2 with you fine, but I'm not comfortable  
3 answering questions about a document that I'm  
4 not familiar with.

5 Q. What I can do, I can introduce every  
6 bank statement, if that makes you more  
7 comfortable, and that's fine with me, from  
8 November of 2011 to the present. I will show  
9 you that every month there is more than  
10 enough cash flow in the bank account to  
11 follow this waterfall. If that makes you  
12 more comfortable, I'll go do that. I'll  
13 print them up. It's not that long. I'm  
14 saying to you, for the sake of sitting here  
15 for four more hours going through every bank  
16 statement, the accountant prepared the  
17 schedule based on the bank statements.

18 You could say, presuming you're  
19 correct, Joe, that's what this appears, and  
20 reserve your right to object if the bank  
21 statements don't say that; is that fair?

22 MR. FELD: Let us take a short  
23 break.

24 MR. MANISCALCO: I could go  
25 through everyone or you could say I

1 David Bornheimer 314

2 reserve my right to object later to  
3 the bank statement, you and  
4 accountants are wrong, you don't know  
5 how to read numbers.

6 MR. FELD: It might be easier  
7 to take one or two as an example.

8 MR. MANISCALCO: I tried to do  
9 that. I took the one from 2013. I  
10 printed five or six of them. That's  
11 a fair approach, Alan.

12 MR. FELD: I don't know if we  
13 have to go through all of them.

14 Give us a minute to talk in the  
15 conference room.

16 (Whereupon, a recess was taken  
17 at this time.)

18 Q. I'm going to mark a document that  
19 actually came from your attorney. We'll mark  
20 as Bornheimer 68, this is a letter from K&L  
21 Gates dated January 2, 2015 to Rick Wathen,  
22 he attaches, Midland's prior counsel,  
23 prepared a waterfall spreadsheet analysis.

24 So, the document I was showing you  
25 before, our accountant utilized the same

1 David Bornheimer 315

2 concept of what Midland's prior counsel had  
3 prepared and then took it to the next level.

4 So, take a look at that, sir.

5 (Whereupon, Bornheimer Exhibit 68,  
6 spreadsheet was marked, for  
7 identification, as of this date.)

8 Q. Have you ever seen that letter  
9 before?

10 A. Yes.

11 Q. If you look at that letter,  
12 Midland's prior counsel, in going through  
13 with Rick Wathen, his inquiries as to what  
14 occurred with respect to the waterfall and  
15 the money, and provided this spreadsheet to  
16 show the waterfall and how the waterfall of  
17 money is supposed to go in accordance with  
18 the plan.

19 If you look at his schedule, it's a  
20 pretty good schedule. He gives you who gets  
21 paid first, second, third, and he goes  
22 through the waterfall.

23 Now, if you look at the first page  
24 of that schedule, does that help you now  
25 understand, we talked about it before, how

1 David Bornheimer 316

2 the waterfall of money flows?

3 A. Yes.

4 Q. What we did was, we cross-referenced  
5 what he provided to Mr. Wathen. And we  
6 actually got the bank statements to coincide  
7 with what he was providing to see whether the  
8 numbers were accurate. That's what you were  
9 looking at before, which is Bornheimer 67,  
10 basically, took the same spreadsheet  
11 analysis, the cash in the bank, we followed  
12 the waterfall that Midland's counsel  
13 provided, and then the last column shows  
14 there's a difference. I don't know where  
15 he's getting his numbers from showing that  
16 there was short falls.

17 Is that waterfall schedule that  
18 you're looking at now, which is Bornheimer  
19 68, was that contained within Midland's  
20 files?

21 Had you ever seen this before?

22 A. I think, I have seen this.

23 Q. Did you see it in connection with  
24 this case or you had seen it previously?

25 A. I think, I saw this previously.

1 David Bornheimer 317

2 Q. If you look at that analysis, if we  
3 go to month one, sir, whether you could  
4 testify or not you'll let me know, if you  
5 look at the first month it appears that  
6 there's money in the bank to make the payment  
7 to the B note and it's not made.

8 Do you know why Midland did not pay  
9 the B note?

10 A. I don't know why in month one.

11 Q. In month two again it didn't pay the  
12 B note, right?

13 A. Right.

14 Q. It seems like there's money in the  
15 account, according to your attorney's  
16 schedule, right?

17 A. I'm getting an idea why, but it  
18 doesn't tell me on the spreadsheet.

19 Q. If you look, there was that letter  
20 that your attorney wrote in November of 2014,  
21 kind of indicates in the first paragraph,  
22 that there was an error as the waterfall  
23 provision contained in the CDC property's  
24 confirmed bankruptcy plan, and on February of  
25 2013 the sum of \$55,000 was applied to

1 David Bornheimer 318

2 accrued, but unpaid interest on the B note;  
3 do you see that?

4 A. Yes.

5 Q. It appears that they may have tried  
6 to correct it by doubling up on payments that  
7 were made in the later months; is that how  
8 you read that?

9 A. That the master server reversed and  
10 reapplied.

11 Q. It seems to be a two month, because  
12 if we took the \$55,584, and divide it by two,  
13 it comes up to that \$27,000 something catch  
14 up payments that are supposed to be made?

15 If you look in the CDC plan, page  
16 18, which is the number on page 18 and 19 in  
17 the CDC plan, if I divide up the \$55,000  
18 number --

19 A. It's also the number in the monthly  
20 B note P&I payments.

21 Q. I wasn't sure. I thought the  
22 monthly P&I payments are in the \$23,000  
23 range. I think, the \$27,000 was the catch  
24 up.

25 If you look at this spreadsheet

1 David Bornheimer 319

2 right here, it shows \$23,869.42 every month.

3 It's being paid after the A note. I'm

4 presuming that's the B note.

5 MR. FELD: Which analysis is

6 this?

7 MR. MANISCALCO: 67.

8 MR. FELD: I'm just going to

9 object again because I think there

10 are concerns about the preparation of

11 that document, the source of it.

12 Feel free to answer if you're

13 comfortable, Dave.

14 A. I'm looking at the B note loan

15 history. I see the \$27,792.18. If I pulled

16 it open to June of 2012, you can see multiple

17 entries of that same dollar amount, which was

18 prior to the catch up payments.

19 Q. So, in June of 2012, there's

20 \$27,792.18 made, right?

21 A. Right.

22 Q. Based on this loan history of the B

23 note, is that part of the catch up payments

24 or do you believe that's part of the monthly

25 principle and interest payment?



1 David Bornheimer 320

2 A. It looks to me like it's part of the  
3 monthly principle and interest payment.

4 Q. I'm trying to figure out where it  
5 says that.

6 A. Because the catch up payments don't  
7 commence under the plan. I'm on page 18,  
8 January of 2013.

9 Q. In 2012, the monthly principle and  
10 interest payments are made, it appears,  
11 right?

12 A. Right.

13 Q. Then, in 2013, if you look at  
14 February 8, 2013, which is on the same  
15 schedule I'm looking at, they are still  
16 making those payments, and sometimes they  
17 double up; you'll see a \$55,000 payment some  
18 months?

19 MR. FELD: This is in the loan  
20 history?

21 MR. MANISCALCO: Yes.

22 A. Yes, I see it, yes.

23 Q. Then, in their loan history on March  
24 21st of 2013, the \$27,792 appears to be the  
25 last entry on the B note's loan history,

1 David Bornheimer 321

2 right?

3 Then, a late charge is assessed the  
4 following month in April.

5 A. If you continue on then, you see the  
6 payment reversals which are in the November  
7 letter.

8 Q. In 2014?

9 A. Yes, starting in October of 2014.

10 Q. Payment reversal, what does that  
11 mean?

12 A. I believe, that's what's referenced  
13 in this 2014 letter.

14 Q. Got it.

15 So, it appears, from looking at this  
16 loan history, payments are made on the B note  
17 up until March of 2013.

18 The next payment for April of 2013  
19 is not reflected in the loan history,  
20 correct?

21 A. I don't see a payment for April of  
22 2013.

23 Q. The next time you see a payment is  
24 October of 2014?

25 A. Correct, a payment reversal.

1 David Bornheimer 322

2 Q. What does that mean?

3 A. That the money was reversed.

4 Q. But there's a payment reversal,  
5 then, a suspense credit. Then, there's a  
6 payment reversal, then, a suspense credit.  
7 So, did they reject the money?

8 A. Again, I think, that's back to the  
9 explanation on the November 13, 2014 letter.

10 Q. Can you explain to me what that  
11 explanation says?

12 A. It says there was an error in the  
13 application of a payment in 2013, on February  
14 7, 2013, the sum of \$55,584.36 was applied to  
15 accrued, but unpaid interest on note B, due  
16 October 1, 2010 and November 1, 2010.

17 This was an error as the waterfall  
18 provisions contained in the confirmed  
19 bankruptcy plan requires current principle  
20 and interest on B note before the catch up  
21 payments.

22 Q. They made that reversal, but then,  
23 if you look in 2015, February of 2015,  
24 payments are being made, but they are placed  
25 in what's called a suspense payment account.

1 David Bornheimer 323

2 It's all through 2015, up until  
3 October of 2015; do you agree with me?

4 MR. FELD: Could you repeat the  
5 question again?

6 (Whereupon, the record was read  
7 back by the reporter.)

8 A. They are placed in the suspense  
9 account, but if you look down beginning in  
10 March of '15, they are starting to be  
11 applied.

12 Q. So, they start applying the monthly  
13 payments that were made on the B note for the  
14 period March of 2015 to October of 2015,  
15 right?

16 A. In the months that they are being  
17 applied?

18 Q. They applied the March through  
19 October 15th payments as regular monthly  
20 payments to the B note, right?

21 A. But, if you look at the line item,  
22 starting the date March 24, 2015, that's for  
23 the December 2013 payment.

24 Q. I see what you mean.

25 So, they are taking the payment in,

1 David Bornheimer 324

2 but they are applying it to a December 2013  
3 payment?

4 A. Right.

5 It looks like they reversed some  
6 payments and then re-posted it.

7 Q. What I'm trying to get at, it seems  
8 very confusing to me, who has knowledge of  
9 the B note's application of payments under  
10 this loan history?

11 A. Midland directs as the special  
12 servicer.

13 Q. Who gives Midland the direction to  
14 put the payments in this loan history that  
15 you just testified about?

16 A. The asset manager is the person  
17 responsible at Midland for making sure the  
18 payments are posted accurately. It looks  
19 like there were some discussions with outside  
20 counsel, as you can see the letter  
21 corresponding.

22 Q. It appears during this time period  
23 2012, 2013, '14 Centrum is asking, presumably  
24 because it's a creditor in CDC, why is the  
25 waterfall not being followed by Midland.

1 David Bornheimer 325

2 Based on everything that you have in  
3 front of you, do you know why Midland didn't  
4 follow the waterfall?

5 A. It looks like the waterfall is being  
6 followed. As detailed in the letter,  
7 November 2014 letter, there was a  
8 misapplication, so, those payments had to be  
9 reversed and applied in the correct way. But  
10 the waterfall is being administered pursuant  
11 to the plan.

12 Q. But how is the waterfall being  
13 administered under the plan, if you look at  
14 this Exhibit 68 from December 1st of 2011 to  
15 May 1st of 2012, there's no payment made to  
16 the B note?

17 A. Right, but there's also a large  
18 amount of property protective advances  
19 outstanding that were satisfied in February  
20 of 2012.

21 Q. I understand that.

22 But notwithstanding those property  
23 protective advances, according to column row  
24 D, the payment is \$27,792, and every month at  
25 the bottom, you'll see, according to your

1 David Bornheimer 326

2 attorney, the cash balance in the account is  
3 in excess of the payment that should be made  
4 to the B note; do you agree with me?

5 A. Then, you can see a large payment  
6 was made was posted to the B note in June of  
7 2012.

8 Q. But my question was, you said  
9 Midland followed the waterfall from day one,  
10 right?

11 A. Right.

12 Q. But Midland did not follow the  
13 waterfall from day one, because December 1,  
14 2011 up until May 1st of 2012, Midland had  
15 money in the account and was not paying the B  
16 note payment; incident that true?

17 A. Then, you see the payments in June  
18 of 2012 that came in and they are applied,  
19 and the reorganized debtor or borrower  
20 receives the credit for when the funds are  
21 received. They are applied as of the date  
22 the funds are received, and you can see that  
23 in the loan history report.

24 Q. Let's make this a little more  
25 simple.

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2 In December of 2011, if you look at  
3 the schedule, sir, there's \$431,000 in the  
4 bank, right, more or less; according to your  
5 attorney's schedule?

6 A. Right.

7 Q. He follows the waterfall and he pays  
8 Wells Fargo \$229,000, right?

9 A. Right.

10 Q. After he pays the \$229,000, he's  
11 still sitting with cash of \$76,000, right?

12 A. Right.

13 Q. But the B note is not paid; right?

14 A. That month.

15 Q. So, the first month Midland did not  
16 follow the CDC plan in the waterfall  
17 provisions; isn't that correct?

18 A. No. I wouldn't characterize it as  
19 not following the plan. To put yourself in  
20 the timeframe that we're talking about, the  
21 plan had just been confirmed and it takes  
22 some time to get the proper receivables set  
23 up on everybody's system. We had to work  
24 with Midland's system and Wells Fargo's  
25 system to set this up.